IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No.1059 of 1985
Date of Decision: 14.12.2007

Giani Ram and others .....Appellants

Vs.

Ghaman ...Respondent

....

CORAM : HON'BLE MR.JUSTICE RAJIVE BHALLA

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Present : Mr. Gopi Chand, Advocate for the appellants.
Mr. Anil Bansal, Advocate for the respondent.

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RAJIVE BHALLA, J (Oral)

The appellants impugn the judgements and decrees passed by the Courts below, decreeing the suit filed by the respondent and dismissing their appeal.

The respondent filed a suit, praying for grant of a permanent injunction, restraining the appellants from dispossessing him, except in due course of law. The plaintiff-respondent, alleged that he was a tenant at will over land measuring 29 Kanals 14 Marlas, situated in the revenue estate of Village Ghatal Maniawas on payment of Rs.30/- as chakota per year for the last 11-12 years and could, therefore, only be ejected, in accordance with the procedure prescribed for ejectment of a tenant. It was further asserted that as the appellants sought to forcibly dispossess the respondent, he was entitled to the grant of an injunction.

The appellants contested the aforementioned assertions by

filing a written statement and pleading that the plaintiff-respondent, had no connection whatsoever, with the land. The land was never leased out to the plaintiff-respondent. The mere fact that certain khasra girdawaris were illegally altered in the name of the plaintiff-respondent, would not confer a right on him to allege tenancy qua the suit property. The plaintiff filed a replication controverting the allegations in the written statement and reaffirming the averments in the plaint. On the basis of the pleadings, the learned trial Court framed the following issues :-

"1. Whether the plaintiff is in possession of the suit land as tenant as alleged ? OPP.

2. Whether the suit is bad on account of non-joinder of necessary parties ? OPD

3. Whether the suit is not maintainable ? OPD.

4. Relief."

On the evidence lead by the parties, the learned trial Court, held under Issue no.1 that though the plaintiff was in possession, he had failed to establish his status as a tenant. Issue No.2 was decided against the appellants. Under issue no.3, the learned trial Court held that the suit was maintainable and, therefore, decreed the suit by granting a permanent injunction, restraining the appellants from dispossessing the plaintiff-respondent from the suit land, except in due course of law.

Aggrieved by the aforementioned judgement and decree, the appellants filed an appeal before the Additional District Judge-II, Narnaul. Vide judgement dated 12.2.1985, the Additional District Judge, dismissed the appeal and affirmed the findings returned by the trial Court.

Counsel for the appellants submits that the plaintiff's plea as to his status as a tenant has been found to be false by both the Courts below. Consequently, the learned Courts were not justified in decreeing the suit and dismissing the appeal. It is argued that a trespasser cannot be granted an injunction, that enables him to perpetuate his illegal possession against the true owner. It is further submitted that the Courts below, have held the respondent to be a liar, a rank trespasser and a person, who fraudulently manipulated revenue records. It is, therefore, asserted that by granting an injunction to the respondent, the Courts below, have committed an error of jurisdiction. Reliance is placed upon a judgement of the Hon'ble Supreme Court, reported as **Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others,** AIR 2004 SC 1801. Another assertion, put forth by counsel for the appellants is that while granting injunction, both Courts failed to return any finding as to the balance of convenience, the irreparable loss etc., likely to be caused.

Counsel for the respondent, on the other hand, submits that once possession is established, its nature is irrelevant. Whether the occupant of a piece of land is a trespasser or a tenant, the only consideration that would weigh is whether a party should take the law into their hands and be allowed to forcibly dispossess a person in settled possession for the last more than 20 years. It is, therefore, submitted that as the judgements and decrees passed by the Courts below are legal and valid, the present appeal be dismissed.

I have heard learned counsel for the parties and perused the impugned judgements.

Counsel for the appellants has framed the following substantial question of law, which are being reproduced hereunder :-

> "(1) Whether a trespasser is entitled to the grant of an injunction to protect his possession.
>
> (2) Whether the learned courts below erred in granting an injunction without returning any finding with respect to balance of convenience, irreparable loss etc., likely to be caused."

The learned trial Court, as also the first appellate Court, have returned concurrent findings of fact that the respondent failed to establish his status as a tenant. It was held that the evidence adduced by the respondent is replete with contradictions and falsehoods and the correction carried out in the khasra girdawaris, in the year 1970, was effected by impleading one Bansi Lal, who was already dead. The Courts below also branded the respondent a `liar' and a `trespasser'. Relevant extracts from the judgement of the first appellate Court are reproduced hereunder :-

> "XXX XXX XXX
>
> He obtained order of correction of khasra girdawari in his name by making Bansi Dass as a respondent who was already dead. Even the oral evidence led by plaintiff in this behalf is not reliable. It is replete with contradictions. Learned trial has rightly held that the plaintiff is a liar.
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> XXX XXX XXX
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> Plaintiff again told lie when he stated that Chander Dass

had appeared before Tehsildar in support of his application for correction of khasra girdawari. This version of the plaintiff is false, for the reason that order of correction of khasra girdawari was obtained by the plaintiff ex-parte and that too, on the statements of Parbhu and Rai Singh (Exts. DW1/1, DW 1/2 and DW-18).

XXX XXX XXX

Material on record leads to this conclusion that the plaintiff was in possession of the suit land on the day of the filing of the suit and his possession was not in the capacity of a tenant but as a trespasser."

The question that merits adjudication is, whether the learned Courts below, committed an error of law/jurisdiction, by granting an injunction to the respondent after recording the findings reproduced herein above,

In my considered opinion, the aforementioned question would have to be answered against the respondent. It is settled law that a rank trespasser, with no legal claim possessory or otherwise, to the disputed property, except for his brazen and blatant assertion of being in possession is not entitled to an injunction against a true owner. The only exception to this rule is where the tenant succeeds in establishing, by cogent evidence, his long, settled and peaceful possession. In this regard, a reference needs to be made to a judgement of the Hon'ble Supreme Court, namely; **Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and**

others (supra), wherein while considering a similar plea, the Hon'ble Supreme Court held as follows :-

> "24. There are two different sets of principles which have to be borne in mind regarding course to be adopted in case of forcible possession. Taking up the first aspect, it is true that where a person is in settled possession of property, even on the assumption that he has no right to remain in property, he cannot be dispossessed by the owner except by recourse of law. This principle is laid down in Section 6 of the Specific Relief Act, 1963. That Section says that if any person is dispossessed without his consent from immovable property otherwise than in due course of law,he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit. That a person without title but in "settled" possession as against mere fugitive possession can get back possession if forcibly dispossessed or rather, if dispossessed otherwise than by due process of law, has been laid down in several cases. It was so held by this Court in Yashwant Singh V. Jagdish Singh (AIR 1968 SC 620), Krishna Ram Mohate V. Mrs.Shobha Venkata Rao (1989(4) SCC 131 at p.136) Ram Rattan V. State of U.P. (1977 (1) SCC 188) and State of U.P. V. Maharaja Dharmender Prasad Singh (1989(2) SCC 505). The leading decision quoted in these rulings is the decision of the Bombay High Court in K.K. Verma V. Union of India (AIR 1954 Bom 358).
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> 25. Now the other aspect of the matter needs to be noted.

Assuming a trespasser ousted can seek restoration of possession under Section 6 of the Specific Relief Act, 1963 can the trespasser seek injunction against the true owner ? This question does not entirely depend upon Section 6 of the Specific Relief Act, but mainly depends upon certain general principles applicable to the law of injunctions and as to the scope of the exercise of discretion while granting injunction ? In Mahadeo Savlaram Sheike V. Pune Municipal Corporation (1995(3) SCC 33), it was held, after referring to Woodrofe on "Law relating to injunction: L.C. Goyal 'Law of injunctions': David Bean 'Injunction' Jayce on Injunctions and other leading Articles on the subject that the appellant who was a trespasser in possession could not seek injunction against the true owner. In that context this Court quoted Shiv Kumar Chadha V. MCD (1993(3) SCC 161) wherein it was observed that injunction is discretionary and that :

"Judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the Court.

26. Reference was also made to Dalpat Kumar V. Prahlad Singh (1992 (1) SCC 719) in regard to the meaning of the words 'prima facie case' and 'balance of conveyance' and observed in Mahadeo's case (supra) that : "It is settled law that no injunction could be granted against the owner at the instance of a person in unlawful possession."

A similar view was taken by the Hon'ble Supreme Court in

Rama Gowda (D) by Lrs. V. Mr.Varadappa Naidu (D) by Lrs. and another, 2004(1) RCR (Civil) 519, relevant extract thereof reads as under :-

> "It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse of law, he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been

committed, while the rightful owner did not have enough time to have recourse of law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner."

It is, thus, abundantly clear that the only exception to the general principle that a rank trespasser cannot pray for and be granted an injunction to protect and perpetuate his unauthorised occupation, as against a true owner is a situation, where the unauthorised occupant establishes long, settled and peaceful possession.

The learned Courts below, after discarding the entries in the revenue records showing the respondent in possession held that he was `a rank trespasser', `a liar' and a person, who had manipulated the revenue record. It was also held by way of clear and categoric findings that the evidence adduced by the respondent with respect to his plea of possession was replete with contradictions and falsehoods. Despite these findings the Courts below proceeded to grant an injunction. The aforementioned findings in my considered opinion disentitles the respondent to the grant of an injunction. Even otherwise, no finding has been returned that the respondent was in settled peaceful possession of the disputed land, to the exclusion of a true owner. The learned Courts below, in essence, rewarded `a rank trespasser', `a liar' and a person, who manipulated the revenue record with an injunction, enabling him to protect his unauthorised possession. In view of what has been stated herein above, the learned Courts below committed an error of law in decreeing the relief of permanent injunction.

Another point that merits reference is that neither the trial

Court nor the first appellate Court recorded any finding, in terms of the well established principles that govern the jurisdiction of a Court, while granting injunctions, namely; recording a finding that denial of an injunction would cause irreparable loss, harm and damage and that balance of convenience lies in favour of granting an injunction.

In view of what has been stated herein above, the present appeal is allowed and the judgements and decrees passed by the Courts below in so far as they grant a decree of permanent injunction are set aside. No order as to costs.

14.12.2007 (RAJIVE BHALLA)
GS JUDGE